

2022R00372-019

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

In the Matter of the Subpoena Regarding No. 1:23-mc-08

23-243-01

**APPLICATION FOR ORDER
COMMANDING MICROSOFT
CORPORATION NOT TO NOTIFY
ANY PERSON OF THE
EXISTENCE OF A GRAND JURY
SUBPOENA**

The United States, through Assistant United States Attorney Jeremy R. Jehangiri, hereby requests that the Court order MICROSOFT CORPORATION not to notify any person (including the subscribers and customers of the account(s) listed in the Grand Jury Subpoena) of the existence of the Grand Jury Subpoena filed herewith for a period of 90 days, subject to renewal, or until further order of the Court.

MICROSOFT CORPORATION is a provider of an electronic communication service, as defined in 18 U.S.C. § 2510(15), and/or a remote computer service, as defined in 18 U.S.C. § 2711(2). Pursuant to 18 U.S.C. § 2703, the United States obtained the Grand Jury Subpoena filed herewith, which requires MICROSOFT CORPORATION to disclose certain records and information to the United States. This Court has authority under 18 U.S.C. § 2705(b) to issue “an order commanding a provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order.” *Id.*

There is probable cause to believe that there exists information associated with the SUBJECT ACCOUNT that constitutes evidence or instrumentalities of criminal violations pertaining to violations of 18 U.S.C. §§ 1366 (destruction of an energy facility) and/or 1951 (interference with commerce by threats or violence).

In this case, such an order would be appropriate because the subject Grand Jury Subpoena relates to an ongoing criminal investigation that is neither public nor known to all of the targets of the investigation, and its disclosure may alert the targets to the ongoing investigation. Accordingly, there is reason to believe that notification of the existence of the Grand Jury Subpoena will

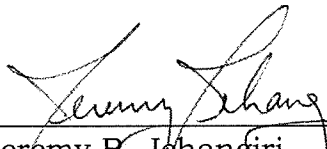
2022R00372-019

seriously jeopardize the investigation, including by giving targets an opportunity to flee from prosecution, destroy or tamper with evidence, or change patterns of behavior. See 18 U.S.C. § 2705(b). Some of the evidence in this investigation is stored electronically. If alerted to the existence of the Grand Jury Subpoena, the subjects under investigation could destroy that evidence, including information saved to their personal computers.

WHEREFORE, the United States respectfully requests that the Court grant the order filed herewith directing MICROSOFT CORPORATION not to disclose the existence or content of the Grand Jury Subpoena for a period of 90 days, subject to renewal, or until further order of the Court, except that it may disclose the Grand Jury Subpoena to its attorney for the purpose of receiving legal advice.

Dated this 27th day of June, 2023.

ALISON J. RAMSDELL
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Regarding

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No. 1:23-mc-08

**ORDER COMMANDING
MICROSOFT CORPORATION NOT
TO NOTIFY ANY PERSON OF THE
EXISTENCE OF A GRAND JURY
SUBPOENA**

The United States has submitted an application pursuant to 18 U.S.C. § 2705(b), requesting that the Court issue an order commanding MICROSOFT CORPORATION, an electronic communication service provider and/or a remote computing service, not to notify any person (including the subscribers and customers of the account(s) listed in the Grand Jury Subpoena) of the existence of the Grand Jury Subpoena filed herewith until further order of the Court.

The Court determines that there is reason to believe that notification of the existence of the Grand Jury Subpoena will seriously jeopardize the investigation, including by giving targets an opportunity to flee, destroy or tamper with evidence, change patterns of behavior, or intimidate potential witnesses. See 18 U.S.C. § 2705(b).

IT IS THEREFORE ORDERED under 18 U.S.C. § 2705(b) that MICROSOFT CORPORATION shall not disclose the existence of the Grand Jury Subpoena filed herewith, or this order of the Court, to the listed subscriber or to any other person, for a period of 90 days, subject to renewal, unless and until otherwise authorized to do so by the Court, except that MICROSOFT CORPORATION may disclose the Grand Jury Subpoena to its attorney for the purpose of receiving legal advice.

Dated: June 28, 2023

BY THE COURT



MARK A. MORENO
United States Magistrate Judge